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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 990

H. REEVE ANGEL & CO., INC., PETITIONER

v.

UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the United States Customs Court (R. 25–36) is reported in 80 Treasury Decisions Advance Sheets, January 11, 1945, p. 22. The opinion of the Court of Customs and Patent Appeals (R. 38–43) is reported in 81 Treasury Decisions Advance Sheets, February 21, 1946, p. 36.

JURISDICTION

The judgment of the Court of Customs and Patent Appeals was entered on January 7, 1946 (R. 43). The petition for a writ of certiorari was filed on March 23, 1946. The jurisdiction of

this Court is invoked under Section 195 of the Judicial Code, as amended (28 U. S. C. 308).

QUESTION PRESENTED

Whether certain imported filtering paper, valued at more than 75 cents per pound, which had been cut into disks prior to the time it was imported, is properly classifiable for tariff purposes as "Papers * * * cut * * * into * * * shapes," under paragraph 1413 of the Tariff Act of 1930, with duty at 30 per centum ad valorem, or as "filtering paper" under paragraph 1409 of the said Tariff Act, as modified by the trade agreement entered into between the United States and the United Kingdom, with duty at 2½ cents per pound and 7½ per centum ad valorem.

STATUTE AND TRADE AGREEMENT INVOLVED

The relevant provisions of the Tariff Act of 1930, and the pertinent parts of the trade agreement entered into between the United States and the United Kingdom of Great Britain and Northern Ireland, which became effective on December 24, 1939, are set forth in the Appendix, *infra*, pp. 12–17.

STATEMENT

On July 8, 1943, petitioner imported into the United States at the port of New York certain filtering paper which is chiefly used in chemical laboratories for separating solids from liquids, and which, prior to its importation had been cut

into disks of five and six inches in diameter, respectively (R. 2, 4, 14). The said filtering paper was classified for tariff purposes by the collector of customs at the port of New York as "Papers * * *, cut * * * into shapes," and duty was assessed thereon at 30 per centum ad valorem, under paragraph 1413 of the Tariff Act of 1930, *infra*, p. 13 (R. 4). Petitioner duly filed a protest, contending that the merchandise should have been classified as "filtering paper" with duty at 2½ cents per pound and 7½ per centum ad valorem, under paragraph 1409 of the said Tariff Act, as modified by the corresponding provision of the trade agreement with the United Kingdom, *infra*, pp. 15–17 (R. 4).

The Customs Court sustained the protest, holding that the merchandise was properly classifiable for tariff purposes as "filtering paper," on the ground that the provision for filtering paper in paragraph 1409 is a designation by use, whereas the provision for papers which have been cut into shapes appearing in paragraph 1413, is a designation by description, and that under the established rule of construction applicable to tariff classifications, an *eo nomine* designation by use is more specific than and prevails over a designation by general description. In deciding the case the Customs Court expressly declined to follow the previous holding of the Court of Customs and Patent Appeals in the case of *United States* v.

W. X. Huber Co., 30 C. C. P. A. (Customs) 183, that filtering paper is included in the term "paper(s)" appearing in paragraph 1413, *supra*.

The Court of Customs and Patent Appeals reversed the decision of the Customs Court, stating that it adhered to its prior decision in the case of *United States* v. *W. X. Huber Co., supra,* and that the law as it was announced in that decision was *stare decisis* of the issue in the case at bar. In the *Huber Co.* case, the merchandise involved was disks of filtering paper chiefly used to filter coffee, and the Court of Customs and Patent Appeals, after fully reviewing and discussing the legislative history of the pertinent provisions of the Tariff Act of 1930 and the prototype provisions of preceding tariff acts, reached the conclusion that the Congress, when enacting the Tariff Act of 1930, intended to include filtering paper in the term "paper(s)" as used in paragraph 1413 thereof.

ARGUMENT

1. Petitioner's contention that the paper disks should be classified as filtering paper under the trade agreement appears to be based, at least in part, on the postulate that the basic term "filtering paper" as used in the trade agreement has a meaning independent of and broader than the meaning of that term as it is used in paragraph 1409 of the Tariff Act of 1930. After stating that the trade agreement is, in effect, a

treaty, petitioner quotes several statements concerning filtering paper appearing in the Digests of Trade Data prepared by the United States Tariff Commission, apparently to show the meaning of the term through the history of the agreement (Pet. 5–6), and then states that because filtering paper, although sometimes imported in sheets, is always cut into circles before it is used, the trade agreement provision is rendered nugatory if filtering paper in circle form is excluded therefrom (Pet. 6). Finally, petitioner states that if it had been intended to exclude filtering paper in circle form from the trade agreement, express language to that effect would have been included in the agreement (Pet. 8). Thus, the reasoning advanced by petitioner assumes that filtering paper cut into disks may be construed to be within the purview of the trade agreement whether or not such paper is included in paragraph 1409 of the Tariff Act.

Petitioner's assumption is patently erroneous. If filtering paper cut into disks is not within the purview of paragraph 1409 of the Tariff Act, such paper is not included in the trade agreement, as is evidenced by the express language of the agreement. The note to Schedule IV of the agreement, *infra*, p. 16, expressly states that the provisions of that schedule shall be construed and given the same effect as if they appeared in the corresponding statutory provisions. In

this case the corresponding statutory provision is paragraph 1409 of the Tariff Act of 1930. Accordingly, if filtering paper cut into disks could not be properly classified under paragraph 1409, it cannot be classified as filtering paper under item 1409 of the trade agreement. See also *United States* v. *Canadian National Railways*, 29 C. C. P. A. (Customs) 272, 278. Furthermore, petitioner's assumption is erroneous on even more vital grounds.

It will be observed that Section 350 of the Tariff Act of 1930, as amended, *infra*, pp. 14–15 (sometimes known as the Reciprocal Trade Agreement Act of 1934), which was in force at the time the trade agreement with the United Kingdom was made, prohibited, at that time, the increasing or decreasing of any existing rate of duty by more than 50 per centum. Thus, if filtering paper cut into disks is properly classifiable under paragraph 1413 of the Tariff Act, with duty at 30 per centum ad volorem, the rate of duty thereon could not have been legally reduced below 15 per centum ad valorem by the trade agreement. It is obvious that a duty of 2½ cents per pound and 7½ per centum ad valorem on filtering paper valued at 75 cents per pound would be less than 15 per centum ad valorem, and would, therefore, be a reduction in the rate of duty of more than 50 per centum, which was expressly prohibited by the law of the United States. Con-

sequently, the term "filtering paper", as used in the trade agreement, must be given the same meaning, with the exception of the minimum value of 75 cents or more per pound which is conceded in this case, that it has in paragraph 1409 of the Tariff Act. A determination of the meaning of the term can be found, therefore, only from a construction of the pertinent provisions of the Tariff Act of 1930. Plainly then, the case is not one calling for the construction of the terms of a treaty made with a foreign government, but is one which is limited to a problem of statutory construction, *i. e.*, a determination of the proper classification of merchandise under the Tariff Act of 1930.[1]

2. In holding that filtering paper cut into disks is properly classifiable under paragraph 1413 of the Tariff Act of 1930, rather than under paragraph 1409 of that Act, the court below adhered to the dominant rule to be followed in the construction of statutes, *i. e.*, that the intention of

[1] Although we do not concede that it has any relevance to this case, we have been advised that the British Government has expressed its dissatisfaction to our Government with the decision of the court below, on the ground that it nullifies the concession on filtering paper granted to the United Kingdom in the trade agreement. However, the note to Schedule IV of the agreement states that the provisions of that schedule shall be construed as if they appeared in the respective provissions of the Tariff Act, and there is nothing in the agreement that prohibits the application of judicial decisions which require a change in the classification of merchandise.

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the legislature must prevail. Hence, it committed no error in declining to apply the rule of construction for which petitioner contends, that in construing competing provisions of tariff legislation an *eo nomine* designation by use is controlling over a designation by description. The latter rule is undoubtedly a sound one in its proper sphere, but, like other technical rules of construction, it is merely an aid for ascertaining legislative intention, and will not be applied in a particular case if the legislative intent is shown by other and better evidence to be contrary to the apparent intent indicated by the rule. *United States* v. *Clay Adams Co., Inc.*, 20 C. C. P. A. (Customs) 285, 288. Technical rules of construction must yield to the will of the legislature. *S. E. C.* v. *Joiner Corp.*, 320 U. S. 344, 350–351; *United States* v. *Freeman*, 3 How. 556, 565.

In the case at bar the court below in declining to apply the rule of construction contended for by petitioner, based its decision on its previous ruling in the case of *United States* v. *W. X. Huber Co., supra,* also involving the classification of filtering paper under paragraph 1413 of the Tariff Act of 1930. In the *Huber Co.* case the court, after making an exhaustive review of the legislative history of the provision of the successive tariff acts covering paper which has been cut into shapes, reached the conclusion that the Congress when enacting the Tariff Act of 1930, intended to include filtering paper in the provision in para-

graph 1413 for papers cut into shapes, when such filtering paper has been cut into the shapes provided for therein. In its review of the legislative history, the court found that the provision for paper cut into shapes first appeared in paragraph 415 of the Tariff Act of 1909 (36 Stat. 11, 63) and that at the time the bill which later became that Act, was under consideration the Congress had before it the "Notes on Tariff Revision," 1909, which directed attention (p. 529) to the decision in *Murphy* v. *United States,* 148 Fed. 336, holding that filtering paper cut into disks remained filtering paper notwithstanding, and in which it was stated that a paragraph amended to meet those conditions was submitted. The court found that although the suggested amendment did not appear in the volume, the reference was to the new paragraph 415 which became the original provision for papers cut into shapes. It then referred to its decision in *Knauth, Nachod & Kuhne* v. *United States,* 3 Ct. Cust. Appls. 183, in which it held that under the new provision in paragraph 415 of the Tariff Act of 1909, paper which had been printed and cut into shapes fell within the provision for "paper cut into shapes" rather than under the provision for "printed matter," and distinguished its apparently contrary decision in the case of *Kupfer Bros. Co.* v. *United States,* 7 Ct. Cust. Appls. 86, pointing out that the language of the corresponding tariff provision then in effect (Paragraph 332 of the Tariff Act of

1913, 38 Stat. 114, 146), had been materially modified by the deletion of some of the original words. Finally, it observed that the deleted language had been restored in paragraph 1313 of the Tariff Act of 1922 (42 Stat. 858, 912), and retained in paragraph 1413 of the presently effective Tariff Act of 1930.

The conclusion reached by the court below in the *Huber Co.* case, *supra,* on the intention of the legislature, which was the basis for its decision in the case at bar, is sound, since it is reasonable to assume from the definite information which the Congress had before it that the inclusion of the pertinent language in paragraph 415 of the 1909 Act was done for the purpose of overcoming the effect of the decision in the *Murphy* case, *supra.* And there was no occasion for the court below to follow petitioner's contention that there had been a legislative approval of judicial determination because of the decision of the Board of General Appraisers in Abstract 24511, 20 Treasury Decisions 14, since the word "paper" appearing in the singular in the 1909 Act now appears in the plural in the 1930 Act, which could well be a sufficient change to overcome the decision in Abstract 24511, *supra.* Furthermore, there is nothing in Abstract 24511 to show that paragraph 415 of the 1909 Act was even considered in that case.

The court below was also correct in rejecting the petitioner's contention that there was a long-

continued uniform administrative practice in classifying paper like that in the case at bar as filtering paper, since the witnesses testified only as to their own experience with respect to merchandise classified in New York and Chicago. The court below has long held that evidence of that character is insufficient to show uniform administrative practice. *United States* v. *Mills & Gibb,* 8 Ct. Cust. Appls. 422, 426.

CONCLUSION

The decision below is correct. There is no conflict of decisions, and the question presented is not of large public importance. It is therefore respectfully submitted that the petition should be denied.

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